

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

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In the Matter of

MILLS PROPERTIES, INC.  
Chesterfield, Missouri

Respondent

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Docket No. TSCA-07-2004-0012

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

**CONSENT AGREEMENT AND FINAL ORDER**

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Mills Properties, Inc. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**ALLEGATIONS**

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F, *Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*, promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

### **Parties**

3. The Complainant, by delegation from the Administrator of the EPA, is the Director, Air, RCRA, and Toxics Division, EPA. Region 7.

4. The Respondent is Mills Properties, Inc., 15480 Elk Ridge Lane, Suite 200, Chesterfield, Missouri, 63017.

### **Statutory and Regulatory Background**

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851-56, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding to it Sections 401 through 412, 15 U.S.C. §§ 2681-92. Section 1018 of the Act required that EPA and the Department of Housing and Urban Development (HUD) jointly issue regulations requiring the disclosure of information relating to lead-based paint and/or lead-based paint hazards to persons selling or leasing housing constructed before the phase out of residential lead-based paint use in 1978. The EPA and HUD issued those regulations on March 6, 1996, which are codified at 40 C.F.R. Part 745, Subpart F. The regulations require that, prior to purchasers and lessees becoming obligated under contract, sellers and lessors of most residential housing built before 1978 disclose the presence of known lead-based paint and/or lead-based paint hazards; provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; provide purchasers and lessees with a federally approved lead hazard information pamphlet and a lead warning statement; and provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards. The failure or refusal to comply with the regulations is a violation of the regulations and of Section 409 of TSCA, for which a monetary penalty may be assessed.

**Alleged Violations**

6. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

**Allegations Pertaining to All Counts**

7. Respondent is a Missouri corporation.

8. Respondent is an "agent" as that term is defined by 40 C.F.R. § 745.103, in that Respondent entered into a contract with Park Clayton Apartments Partners, L.P. to represent it for the purpose of leasing the residential property Park Clayton Apartments Partners, L.P. owns, known as Park Clayton Apartments, located at 6605 Clayton Avenue, St. Louis, Missouri, 63139.

9. The property referenced above was constructed prior to 1978.

10. The property referenced above is "target housing" as that term is defined by 40 C.F.R. § 745.103 because the property is housing constructed before 1978.

11. Records collected from Respondent show that Respondent entered into a contract to lease Apartment 120 of the property on or about July 12, 2000.

**Count I - Failure to Provide Pamphlet**

12. Records collected from Respondent show that Respondent failed to provide the lessee of Apartment 120 with an EPA-approved lead hazard information pamphlet before the lessee was obligated under a contract to lease target housing.

13. Respondent's failure to provide an EPA-approved lead hazard information pamphlet is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

**Count II - Failure to Include Lead Warning Statement**

14. Records collected from Respondent show that Respondent failed to include a lead

warning statement with the contract to lease.

15. Respondent's failure to include a lead warning statement with the contract to lease is a violation of 40 C.F.R. §§ 745.113(b)(1) and 745.115, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count III - Failure to Include Owner's Disclosure Statement

16. Records collected from Respondent show that Respondent failed to include in the lease contract a statement by the owner disclosing the owner's knowledge regarding the presence of lead-based paint and/or lead-based paint hazards in the property.

17. Respondent's failure to include in the lease contract a statement by the owner disclosing the owner's knowledge regarding the presence of lead-based paint and/or lead-based paint hazards in the property is a violation of 40 C.F.R. §§ 745.113(b)(2) and 745.115, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count IV - Failure to List Available Records and Reports

18. Records collected from Respondent show that Respondent failed to include in the lease contract a list of available records and reports regarding lead-based paint and/or lead-based paint hazards in the property or a statement that none were available.

19. Respondent's failure to include in the lease contract a list of available records and reports regarding lead-based paint and/or lead-based paint hazards in the property or a statement that none were available is a violation of 40 C.F.R. §§ 745.113(b)(3) and 745.115, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

**CONSENT AGREEMENT**

1. For purposes of this proceeding, Respondent admits that Complainant has jurisdiction to bring this action pursuant to the statutory and regulatory provisions set forth above.

2. Respondent neither admits nor denies the factual allegations set forth above, and Respondent's participation in this Consent Agreement shall not be considered or deemed an admission of liability.

3. Solely for purposes of this Consent Agreement and Final Order, Respondent waives its right to contest Complainant's allegations above, and its rights to appeal the Final Order accompanying this Consent Agreement.

4. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

5. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R.

~~Part 745, Subpart F.~~

6. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of Three Thousand and Eighty Dollars (\$3080) to be paid within forty-five (45) days of the effective date of the Final Order.

7. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 6 above, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not

paid within ninety (90) days of the due date.

**FINAL ORDER**

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 et seq., and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a mitigated civil penalty of Three Thousand and Eighty Dollars (\$3080) within forty-five (45) days of the effective date of this Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

EPA-Region 7  
c/o Mellon Bank  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251.

2. A copy of the check shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Mike Gieryic  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

**RESPONDENT**  
**MILLS PROPERTIES, INC.**

Date: Oct 23, 2003

By: [Signature]  
Bruce Mills  
Printed Name

Title: Owner/CEO

**COMPLAINANT**  
**ENVIRONMENTAL PROTECTION AGENCY**

Date: 10/31/03

By: [Signature]  
Lynn Shugantz, Acting Chief  
Radiation, Asbestos, Lead and  
Indoor Programs Branch

Date: 10/31/03

By: [Signature]  
Mike Gieryic  
Office of Regional Counsel

**IT IS SO ORDERED.** This Order shall become effective immediately.

Date: November 5, 2003

[Signature]  
ROBERT L. PATRICK  
Regional Judicial Officer  
EPA, Region 7

IN THE MATTER OF Mills Properties, Inc., Respondent  
Docket No. TSCA-07-2004-0012

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Michael Gieryic  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,  
Return Receipt Requested, to:

Kathleen M. Whitby, Esq.  
Spencer Fane Britt & Browne LLP  
1 N. Brentwood Blvd.; Suite 1000  
St Louis, Missouri 63105

Dated: 11/10/03



Kathy Robinson  
Regional Hearing Clerk